IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

TRAVIS DUNCAN, **Plaintiff,** **v.** **UPPER CRUST BAKERY & CAFE, LLC,** **serve registered agent:** **William G. Buck** **802 Bourn Avenue** **Columbia, Missouri 65203** **and,** **ADAM GUY,** **serve at:** **3903 Foxcreek Way** **Columbia, Missouri 65203-8862** **Defendants.**	)	**Case No. ____________________** **Jury Trial Demand**

COMPLAINT

Plaintiff Travis Duncan alleges and states:

1. Plaintiff Travis Duncan is an independent photographer and resident of Cole County, Missouri.

2. Defendant Upper Crust Bakery & Cafe, LLC ("Upper Crust"), is a Missouri limited liability company, incorporated in the State of Missouri, with its registered agent and registered office located in Boone County, State of Missouri, and Upper Crust owns and operates several restaurants (including the Brasseric Restaurant) located in Boone County, State of Missouri.

3. Defendant Adam Guy is the owner and manager of Upper Crust and he operates the restaurants (including the Brasseric Restaurant) owned by Upper Crust. On information and belief Adam Guy resides in Boone County, State of Missouri.

4. Travis Duncan brings this action to enforce his copyright associated with one of his photographs, duplicated and used without his permission by both Defendants which photo was then digitally manipulated and displayed by Defendants in a Facebook advertisement for the Brasseric restaurant and placed by Defendants in an advertisement on the Columbia Convention and Visitor's Bureau website for the Brasseric restaurant.

5. The court has general personal jurisdiction over Defendants because Defendant Upper Crust, is a limited liability corporation, incorporated in the State of Missouri, headquartered and with its principal place of business located in the City of Columbia, State of Missouri, and with its registered agent having its registered office in Columbia, State of Missouri, and because, on information and belief, Defendant Adam Guy lives in Boone County, State of Missouri.

6. Venue of this lawsuit is proper in the Western District of Missouri under Federal Rule of Civil Procedure 14, because Defendant Upper Crust, is a limited liability corporation, incorporated in the State of Missouri, headquartered and with its principal place of business located in the City of Columbia, State of Missouri, and with its registered agent having its registered office in Columbia, State of Missouri, and because, on information and belief, Defendant Adam Guy lives in Boone County, State of Missouri. Both Defendants are subject to the District Court's general personal jurisdiction in this District, the lawsuit has the most significant contacts with this judicial district, and Defendant Upper Crust's registered agent and

office is within this judicial district pursuant to 28 U.S.C. §1391(b)-(c) and pursuant to 28 U.S.C. §1400(a).

7. This Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §1331 and 28 U.S.C. §§1338(a)-(b), 1367(a), because the claims arise under the United States Copyright Act, 17 U.S.C. §101, et seq. and arise under the United States Digital Millennium Copyright Act, 17 U.S.C. §1201, et seq.

COUNT 1
(Copyright Infringement)

8. For the allegations of Paragraph 8, Plaintiff Travis Duncan restates and incorporates by reference the allegations of Paragraphs 1-7.

9. Travis Duncan earns his living and supports his family as an independent photographer.

10. Travis Duncan creates photographs which are then made available for license as part of his business.

11. In 2016, Travis Duncan took photographs of Brasseric's food and chef for an article in Feast Magazine.

12. Two Travis Duncan photographs were used in the Feast Magazine Article and a true and accurate copy of the Feast Article and the two photographs is denoted Exhibit #1 and is attached to this Complaint. A notice that Travis Duncan was the photographer is located right next to the two photos.

13. Travis Duncan retained the copyright in the two photographs used in Feast magazine.

14. Travis Duncan registered his photographs with the United States Office of Copyright and a true and accurate copy of his copyright registration is denoted Exhibit #2 and is attached to this Complaint.

15. During 2016, Travis Duncan learned that Defendants had stolen one of his photographs (the photo of the plate of food) from the Feast Magazine article. Defendants duplicated the photograph and digitally manipulated the photograph. Defendants chose to secretly duplicate Duncan's work rather than pay for a license.

16. Travis Duncan discovered that his photographs were prominently displayed on Defendant Upper Crust's Facebook Advertisement and on Upper Crust's advertisement and listing on the Columbia Convention and Visitors Bureau website.

17. Attached to this Complaint and denoted Exhibit #3 & #4 are true and accurate copies of Travis Duncan's infringed photograph as displayed on Defendants' Facebook Ad and on Defendants ad or listing with the Columbia Convention and Visitors Bureau website.

18. The photograph that was duplicated, altered, and displayed by Defendants was registered by Travis Duncan for copyright with the Copyright Office of the United States.

19. Travis Duncan is the sole owner of the copyright of the photograph duplicated and altered by Defendants.

20. Travis Duncan's copyright in the infringed photograph is valid and enforceable.

21. Defendants' infringements were willful.

22. Defendants did not have permission or a license to use this or any other of Travis Duncan's photographs.

23. Defendants' wrongful acts constitute a violation of 17 U.S.C. §501.

24. Plaintiff Travis Duncan is entitled to and elects to recover statutory damages from Defendants.

25. Plaintiff Travis Duncan has incurred and will continue to incur legal fees and costs in prosecuting this claim.

26. All conditions precedent to Plaintiff Travis Duncan bringing and prevailing on this claim has been satisfied.

WHEREFORE, Plaintiff Travis Duncan respectfully asks this District Court to enter judgment for him and against Defendants Upper Crust Bakery & Cafe, LLC, and Adam Guy, jointly and severally, for statutory damages of $150,000.00 for each of the infringements, or, in the alternative, for $150,000.00 for the photograph stolen and used by Defendants, or such lesser amount as found proper by the District Court, for prejudgment interest, for reasonable attorney fees and costs incurred by Travis Duncan in prosecuting this action, and for any other relief deemed just.

COUNT 2
(First Digital Millennium Copyright Act Violation - Removal)

27. For the allegations of Paragraph 27, Plaintiff Travis Duncan restates and incorporates by reference the allegations of Paragraphs 1-26.

28. Plaintiff Travis Duncan's placement of conspicuous notices that he is the photographer anchored to each photograph is copyright management information and a security measure to deter and avoid copyright infringement and protect Travis Duncan's copyrighted photos from duplication, theft or unauthorized use.

29. Defendants copied Travis Duncan's photograph without the attached notice that Travis Duncan was the photographer is a violation of the Digital Millennium Copyright Act. *See* 17 U.S.C. §1201 & §1203.

30. Defendants' wrongful acts and violations of the Digital Millennium Copyright Act were willful.

31. All conditions precedent to Travis Duncan bringing and prevailing on this claim have been satisfied.

WHEREFORE, Plaintiff Travis Duncan respectfully asks this District Court to enter judgment for him and against Defendants Upper Crust Bakery & Cafe, LLC, and Adam Guy, jointly and severally, for statutory damages of $25,000.00 for the photograph stolen and used by Defendants, or such lesser amount as found proper by the District Court, for prejudgment interest, for reasonable attorney fees and costs incurred by Travis Duncan in prosecuting this action, and for any other relief deemed just.

COUNT 3
(Second Digital Millennium Copyright Act Violation - Distribution)

32. For the allegations of Paragraph 32, Plaintiff Travis Duncan restates and incorporates by reference the allegations of Paragraphs 1-31.

33. Plaintiff Travis Duncan's placement of a conspicuous notice that he is the photographer anchored to the infringed photograph is copyright management information and a security measures to deter and avoid copyright infringement and protect Travis Duncan's copyrighted photo from duplication, theft or unauthorized use.

34. Defendants duplicating the photograph without the attached notice that Travis Duncan was the photographer, and then displaying and distributing the photographs on webpages on the internet are each violations of the Digital Millennium Copyright Act. *See* 17 U.S.C. §1201, §1202 & §1203.

35. Defendants' wrongful acts and violations of the Digital Millennium Copyright Act were willful.

36. All conditions precedent to Travis Duncan bringing and prevailing on this claim have been satisfied.

WHEREFORE, Plaintiff Travis Duncan respectfully asks this Court to enter judgment for him and against Plaintiff Travis Duncan respectfully asks this District Court to enter judgment for him and against Defendants Upper Crust Bakery & Cafe, LLC, and Adam Guy, jointly and severally, for statutory damages of $25,000.00 for the photograph stolen and used by Defendants, or such lesser amount as found proper by the District Court, for prejudgment interest, for reasonable attorney fees and costs incurred by Travis Duncan in prosecuting this action, and for any other relief deemed just.

JURY TRIAL DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Travis Duncan demands a trial by jury of all issues that may be so tried.

Respectfully submitted,

SCHULTZ & ASSOCIATES LLP

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